



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNSD**

Introduction

This hearing dealt with the Applicant's dispute resolution application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for return of part or all of the Applicant's security deposit pursuant to Sections 38 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Applicant and his Witness attended the hearing at the appointed date and time and provided affirmed testimony. The Landlords did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Applicant and I were the only ones who had called into this teleconference. The Applicant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Applicant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Applicant testified that he was not recording this dispute resolution hearing.

The Applicant confirmed that he personally served the Landlords with the Notice of Dispute Resolution Proceeding package and evidence for this hearing on March 9, 2022 (the "NoDRP package"). The Applicant's Witness confirmed that he observed the Applicant serving the Landlords with the NoDRP package. I find that the Landlords were served with the NoDRP package for this hearing on March 9, 2022 in accordance with Section 89(1)(a) of the Act.

Issues to be Decided

1. Is the Applicant entitled to an Order for return of part or all of the Applicant's security deposit?
2. Is the Applicant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Applicant confirmed that this oral periodic tenancy began on October 1, 2021. Monthly rent was \$750.00 payable on the first day of each month. The Applicant paid first and last month's rent, and a security deposit of \$350.00 was collected at the start of the tenancy. The Landlords still retain the security deposit.

The Applicant testified that the two Landlords are on the lease for the house. On September 28, 2021, one Landlord wrote the Applicant with a housing opportunity offer. On October 1, 2021, the Applicant began living with the two Landlords where they all shared the whole house.

On December 15, 2021, the Applicant was told that he had 30 days to vacate the house. The Applicant found alternative housing and vacated the home on January 1, 2022. The Landlords returned the Applicant's last month's rent, but not the security deposit. On January 18, 2022, the Applicant served his forwarding address to the Landlords.

On January 10, 2022, the Landlords wrote the Applicant about his security deposit. The Applicant did not give the Landlords permission to keep any of his security deposit. The Applicant seeks the return of his security deposit.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlords' absence, therefore, all the Applicant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

RTB Policy Guideline #27-Jurisdiction assists the public to understand the director's official power to make legal decisions under the Act. Policy Guideline #27 states:

...

4. DISPUTES BETWEEN TENANTS AND ROOMMATES

The Act gives the director authority to resolve disputes between landlords and tenants. However, a tenant who is entitled to possession of a rental unit and is occupying that rental unit is excluded by definition from being a landlord in the Act. That means the director has no jurisdiction to resolve disputes between co-tenants, tenants in common, or roommates.

For example, if Tenant A enters into a tenancy agreement to rent a 2 bedroom rental unit from their landlord and then rents the second bedroom out to Tenant B, the Act would not apply to a dispute between those tenants even if Tenant B has exclusive possession of the second bedroom. Under the tenancy agreement between Tenant A and the landlord, Tenant A is entitled to possession of the 2 bedroom rental unit. Since Tenant A is still occupying that rental unit, Tenant A is excluded by definition from being a landlord under the Act. The director will decline jurisdiction to resolve these types of disputes.

However, if Tenant A is renting residential property (like a house) from their landlord that has more than one rental unit (like an upper suite and a lower suite) and Tenant A rents out the lower suite to Tenant B, the Act may apply because Tenant A may meet the definition of a landlord. The director may take jurisdiction in these matters. (emphasis mine)

In this matter, the facts reflect Policy Guideline #27's example highlighted above. I find the Applicant's housing situation was as co-tenants or roommates, rather than as landlord and tenant. The director has no jurisdiction in this matter, and the Applicant must find his remedy elsewhere. The Applicant's dispute resolution claim is dismissed without leave to re-apply.

As the Applicant was not successful in his claim, he must bear the burden of the application filing fee.

Conclusion

The Applicant's claim is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 27, 2022

Residential Tenancy Branch